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**David L. Meier**  
Director  
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April 16, 1997

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street NW Room 222  
Washington DC 20554

**RECEIVED**  
**APR 16 1997**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of:

Implementation of the Telecommunications  
Act of 1996;

Accounting Safeguards Under the  
Telecommunications Act of 1996

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CC Docket No. 96-150

Dear Mr. Caton:

Enclosed are an original and eleven copies plus two extra public copies of the Reply of Cincinnati Bell Telephone Company to Oppositions to its Petition for Reconsideration in the above referenced proceeding. A duplicate original copy of this letter and Reply is also provided. Please date stamp this as acknowledgment of its receipt and return it. Questions regarding these Comments may be directed to me at the above address or by telephone on (513) 397-1393.

Sincerely,

*David L. Meier*

Enclosure

cc: International Transcription Services, Inc.  
Ernestine Creech (paper and disk copy)

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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| In the Matter of                | ) |                      |
|                                 | ) |                      |
| Implementation of the           | ) |                      |
| Telecommunications Act of 1996  | ) | CC Docket No. 96-150 |
|                                 | ) |                      |
| Accounting Safeguards Under the | ) |                      |
| Telecommunications Act of 1996  | ) |                      |

**REPLY OF CINCINNATI BELL TELEPHONE COMPANY**  
**TO OPPOSITIONS TO PETITION FOR RECONSIDERATION**

On February 20, 1997, Cincinnati Bell Telephone Company ("CBT") filed a Petition For Reconsideration requesting the Commission to reconsider its Report and Order in the above captioned proceeding. CBT seeks reconsideration of the decision to require carriers to record all affiliate transactions that are neither tariffed nor subject to prevailing company prices at the higher of cost and estimated fair market value when the carrier is the seller or transferor, and at the lower of cost and estimated fair market value when the carrier is the buyer or transferee.<sup>1</sup> On March 26, 1997, AT&T Corp. ("AT&T") filed an Opposition to Petitions for Reconsideration which addresses the arguments raised in CBT's petition. On April 2, 1997, MCI Telecommunications Corporation ("MCI") and The Telecommunications Resellers Association ("TRA") did

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<sup>1</sup> In the Matter of Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Report and Order, released December 24, 1996 and published in the Federal Register on January 21, 1997, at ¶ 147-148.

the same. Pursuant to Section 1.429(g) of the Commission's rules, CBT hereby replies to these Oppositions.<sup>2</sup>

As CBT explained in its Petition, in paragraph 147 of the Report and Order, the Commission addresses valuation methods to be used for the provision of services, conforming the acceptable methods to those which are used to value asset transfers.<sup>3</sup> In paragraph 148, the Commission provides an exception to this general rule for valuation.<sup>4</sup> In its Petition, CBT asserted that the application of these regulations unfairly disadvantages companies such as CBT by requiring them to undertake a burdensome valuation process to determine the fair market value of services for which there is no readily ascertainable market value. CBT further asserted that such a valuation process places additional costs on ratepayers. CBT also stated that imposing a valuation process not previously required places a greater regulatory burden upon small and mid-sized LECs like CBT. This additional regulation contradicts the deregulatory goal of the Telecommunications Act of 1996 (the "Act"). CBT asserts that instead of increasing regulatory requirements as the telecommunications market becomes more competitive, the Commission should be reforming its policies to reduce regulatory burdens, consistent with the intent of the Act.

The arguments made by AT&T in its Opposition are without merit. AT&T bases its argument upon two assumptions. First, AT&T assumes that services provided at

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<sup>2</sup> 47 C.F.R. § 1.429.

<sup>3</sup> Report and Order, at ¶ 147.

<sup>4</sup> Report and Order, at ¶ 148.

fully distributed cost result in the services being provided at less than fair market value. Second, AT&T assumes that when a regulated LEC provides services to an affiliate at fully distributed cost, there is an automatic increase in cost to the ratepayer. Based on these assumptions, AT&T infers that in every case the fully distributed cost is less than fair market value and the ratepayer is always disadvantaged.

AT&T's first assumption is not valid. Services provided at fully distributed cost are not necessarily provided at lower than fair market value. The problem, however, is that fair market value is not readily ascertainable for many of these services.

AT&T's second assumption, that the cost to the ratepayer would always increase, is also untrue. On the contrary, there is a real benefit to the ratepayer in allowing the LEC to provide services to the affiliate at a fully distributed cost. If the carrier was not allowed to provide services to the affiliate at fully distributed cost, the affiliate would more likely seek those services elsewhere. Therefore, the carrier would be deprived of the ability to recover a portion of its fixed costs, which would in turn be fully borne by the ratepayer. In addition, the significant cost of determining fair market value would be passed on to the ratepayer. The Commission itself recognized that "when an affiliate is established solely to provide services to the carrier's corporate family the benefits of scale and scope are reflected in the affiliate's costs."<sup>5</sup>

The Commission further indicated that these benefits are ultimately transferred to the ratepayers. CBT submits that allowing the most cost effective affiliate to perform activities such as human resources, payroll and other administrative functions, reaches

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<sup>5</sup> Report and Order at ¶ 148.

the same result as allowing a service affiliate to perform these functions. This pooling of resources to achieve economies of scale and scope is critically important to small and mid-sized companies. In addition, this process allows the benefits of size and scope to flow through to the ratepayer. In their Petitions, CBT and SNET adequately demonstrate that these benefits of size and scope should also be available to the ratepayers of small and mid-sized companies whose present corporate structures do not allow them to qualify for the existing narrow exception.

MCI's Opposition is also without merit. MCI argues that, "[t]he independents fail to recognize that the Order's limited exemption rests on a finding that centralized provision of services can result in cost savings; under these circumstances, the potential benefits of conducting a fair market value study would be reduced."<sup>6</sup> MCI further contends that "[i]n the case of services provided by a LEC to its nonregulated affiliates, it is clear that the potential gain of determining whether fully distributed cost undervalues a transaction outweighs the cost of performing a fair market value study."<sup>7</sup>

MCI's assertions are incorrect. GTE, SNET and CBT recognize that centralized provision of services can result in cost savings. This is the premise upon which their Petitions are based. As the limited exception currently exists, CBT and others are prohibited from realizing the advantage of these cost savings. The exception fails to allow LECs or the parent companies that provide services to their affiliates to continue to value these services at fully distributed cost without a determination of fair market

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<sup>6</sup> MCI at p. 2.

<sup>7</sup> MCI at pp. 2-3.

value. CBT has established in its Petition that these cost savings benefit ratepayers.<sup>8</sup>

In addition to CBT's Petition, SNET<sup>9</sup> and GTE<sup>10</sup> have established that the additional cost to the LEC of establishing the fair market value cannot be justified. BellSouth Corporation ("BellSouth") also supports the view that imposing the additional costs upon all LECs and their ratepayers is unwarranted.<sup>11</sup> BellSouth correctly states, "[f]or rate of return companies, these additional costs will be borne directly by ratepayers."<sup>12</sup> CBT submits, contrary to MCI's assertions, that the record is clear that the cost of performing a fair market value study in these circumstances clearly outweighs any potential gain and may, in fact, result in additional cost for the ratepayer.

TRA's arguments are similar to those of AT&T and MCI in several aspects. For example, TRA "urges the Commission to retain its unitary valuation scheme and to decline to expand the exception already afforded services purchased by a carrier from an affiliate which exists solely to provide services to members of the carrier's corporate family."<sup>13</sup> TRA states "the issue hence is not whether regulation generates additional burdens and costs, but whether such burdens and costs are justified."<sup>14</sup> TRA adds no

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<sup>8</sup> CBT at pp. 3-4.

<sup>9</sup> SNET at pp. 4-5.

<sup>10</sup> GTE at pp. 6-8.

<sup>11</sup> BellSouth at p. 3.

<sup>12</sup> BellSouth at p. 3, fn. 7.

<sup>13</sup> TRA at p. 5.

<sup>14</sup> TRA p. 7.

new support for its assertions. Since CBT and others have adequately demonstrated that the additional costs to be imposed on small and mid-sized LECs cannot be justified, no further comment on this issue is necessary.

TRA also cites the Report and Order, claiming that unaffiliated service providers would be harmed "if the valuation method for affiliate transactions induce[d] carriers and their affiliates to 'use services that [were] not competitive to subsidize services that are subject to competition,' thereby putting service providers not affiliated with the carrier at a competitive disadvantage."<sup>15</sup> In making its argument, TRA does not present any new support, but merely repeats the Commission's statements in the Report and Order. In response to TRA's argument, CBT submits that unaffiliated service providers are no more disadvantaged, if at all, by CBT's ability to value services provided to affiliates at fully distributed cost than they were in the past. In addition, if the Commission were to allow CBT to continue to provide services to affiliates at fully distributed cost, these unaffiliated service providers would be no more disadvantaged, if at all, than they will be under the current exemption allowing much larger companies to provide services at fully distributed cost.


Contrary to the purpose of the Act, the Report and Order imposes a regulatory burden on small and mid-sized LECs by forcing a valuation of services not previously required. CBT suggests that the Commission's logic is misguided in not allowing companies like CBT to receive the benefits of the exception, which will be realized by larger companies. The rationale utilized in this proceeding for granting the exception

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<sup>15</sup> TRA at p. 6, citing Report and Order at ¶ 145.

also supports expanding the exception, as requested by CBT. Accordingly, CBT requests that the Commission grant its Petition for Reconsideration, and, either modify or waive the valuation rule outlined in paragraph 147 of the Report and Order to allow those carriers who provide services solely to their affiliates to continue to value those services at fully distributed costs. In the alternative, CBT would request that the Commission delay the effective date of the valuation rule outlined in paragraph 147 by at least six months, so that small and mid-sized companies will have adequate time to prepare for the changes in valuation required by the Report and Order.

Respectfully submitted,



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Dated: April 16, 1997

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## CERTIFICATE OF SERVICE

The Undersigned hereby certifies that copies of the foregoing Oppositions to its Petition for Reconsideration of Cincinnati Bell Telephone Company has been sent by first class United States Mail, postage prepaid, or by hand delivery, on April 16, 1997, to the persons listed on the attached service list.

  
Judy Piepmeyer

\* via hand delivery

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